



FP-07-09

September 20, 2007

Subject: Update to Ability-to-Benefit Loan Discharge Procedures

Summary: This letter provides additional guidance to guaranty agencies for evaluating applications for FFEL false certification loan discharges based upon a borrower's claim that an institution did not properly determine the borrower's ability-to-benefit.

Dear Guaranty Agency Director:

A portion of DCL GEN 95-42 (September 1995) (copy attached) discusses how to evaluate applications for discharges of loans made under the Federal Family Education Loan Program (FFELP) and the William D. Ford Federal Direct Loan Program (DLP) based on a school's false certification of a student's ability-to-benefit (ATB), when the borrower offers no evidence of the false certification other than his or her own statement. This letter supplements that guidance and clarifies for guaranty agencies certain responsibilities they bear in this area.

1. By regulation, guaranty agencies are required to consider ATB discharge applications "in light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations." 34 C.F.R. § 682.402(e)(6)(iv). DCL GEN 95-42 elaborates that "Because several authorities with oversight responsibilities, including the Department, accrediting agencies, guarantors, state licensing bodies, and the school's own auditor, would typically have both the opportunity and responsibility to find and report improper ATB admission practices, the absence of any such finding in reports about a school raises an inference that no improper practices were reported because none were taking place."

In applying the above regulations and guidance, guaranty agencies evaluating records of oversight that are contained solely in the Department's Institutional Data System or Postsecondary Education Participants System (PEPS), and that cannot be located in hard copy, are instructed to regard ATB violations entered into those systems as findings of improper ATB admission practices for discharge purposes, even if a "0" may be entered in the corresponding liability field. In contrast, if hard copy records of oversight findings are available, guaranty agencies must not regard ATB violations entered into those systems, with a "0" in the corresponding liability field, as findings of improper ATB admission practices for discharge purposes without examining the hard copy oversight reports and such other information as is reasonably available to determine the nature of the violations and whether there is any evidence the findings were discovered in later inquiry or proceedings to be erroneous.

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In addition, even if findings of improper ATB admission practices by a school have been reported by oversight agencies, a guaranty agency must not grant a discharge if the guaranty agency has other information that directly contradicts material facts or contentions in the discharge application. Guaranty agencies must consider all information available to them regarding the sufficiency of the application, including other self-certified information provided by the student, such as the information contained in the student's Free Application for Federal Student Aid (FAFSA).

2. DCL GEN 95-42 states that guaranty agencies must "obtain existing documentation [of ATB findings] available from any public or private agency that reviewed or had oversight responsibility for the school." The regulations also impose responsibility on guaranty agencies for investigating and reporting any reliable information that a school in a state for which the guaranty agency is responsible may have falsely certified a student's eligibility. 34 C.F.R. § 682.402(e)(6)(i).

As a result of these responsibilities, and without regard to document retention policies, each guaranty agency must maintain, on a school-by-school basis, all oversight material it obtains in evaluating ATB discharge applications and in investigating allegations of ATB violations and must promptly make the information available on request to the Secretary and any other guaranty agency that requests it. This responsibility is not in lieu of any additional agency obligations as described in the regulations and DCL GEN 95-42.

As part of this recordkeeping responsibility, guaranty agencies must maintain a school-by-school record of the number of discharge applications it has received, the campus to which each application pertains if the school had or has multiple campuses, the date of attendance of the student applying for discharge, and whether the discharge was granted or denied. The agency must share this information with other guaranty agencies and the Secretary on request.

As part of obtaining the documentation necessary for determining whether a school has a relevant history of ATB oversight report findings, guaranty agencies must, among other things, either check the Department's PEPS for such findings, or contact each oversight agency that enters data into PEPS regarding the school to obtain that information.

3. DCL GEN 95-42 explains that in the absence of any ATB oversight findings about a school, the evidence provided by a student seeking an ATB discharge must go beyond the student's assertions that he or she meets the individual qualifications for discharge.

In such cases, if there is no evidence that ATB requirements were met other than the absence of ATB oversight report findings, and if there is also no borrower-specific evidence that he or she fails to qualify for a discharge, guaranty agencies must consider, in addition to the student's allegations and any other evidence the student submits, the incidence of discharge applications filed regarding that school by students who attended the school during the same time frame as the applicant, as well as the possibility that there has been collusion among the students in submitting the applications received.


In such cases, if there is a high incidence of applications submitted and no evidence of collusion, the guaranty agency may determine that the school's ATB practices were defective during that time frame. Guaranty agencies in such cases should give heightened weight to a high incidence of discharge applications with regard to schools for which no oversight reports or data of any kind are available. If a guaranty agency determines that discharges should be granted based on incidence of discharge applications received for a particular school, it should re-evaluate the discharge claims previously denied for students who attended that school during the same time period, to determine whether discharge is now warranted.

Similarly, where there is no evidence that ATB requirements were met other than the absence of ATB oversight report findings, and there is also no borrower-specific evidence that he or she fails to qualify for a discharge, credible evidence of the following provides an adequate basis for granting a discharge application, and should be given heightened weight with regard to schools for which no oversight reports are available: (i) withdrawal rates exceeding 33 percent at the school at the relevant time, or (ii) for students who entered repayment on their loans during or after federal fiscal year 1993, an annual loan default rate exceeding 40 percent; for students who entered repayment on their loans during federal fiscal year 1992, an annual loan default rate exceeding 45 percent; for students who entered repayment on their loans during federal fiscal year 1991, an annual loan default rate exceeding 50 percent; for students who entered repayment on their loans during federal fiscal year 1990, an annual loan default rate exceeding 55 percent; and for students who entered repayment on their loans during or before federal fiscal year 1989, an annual loan default rate exceeding 60 percent.

If oversight reports contain specific findings that ATB violations occurred at some of a school's campuses but not at others, consideration of incidence, withdrawal, and loan default rates should proceed on a campus-by-campus basis rather than based on data regarding the school as a whole.

Should you have questions about the information provided in this letter please contact Janet Nori by email at janet.nori@ed.gov or by phone at (415) 485-5658.

Sincerely,



Lawrence A. Warder
Acting Chief Operating Officer
Federal Student Aid

Attachment